

JUL 12 2005

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF	)	
APPLICATION FOR LICENSE FOR	)	FINDINGS OF FACT, CONCLUSIONS OF
WADLOW ROZANEK FUNERAL	)	LAW, RECOMMENDED ORDER AND
HOME	)	ORDER
	)	
	)	CAUSE NO. A-1622
	)	

This matter came on for hearing on the 22nd day of June, 2005, before Martin W. Swanson, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Keri Schechinger. Rod Rozanek (Rozanek), President of Wadlow Rozanek Funeral Home was present but not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. On or about April 22, 2005, the Nebraska Department of Insurance received an application from Wadlow Rozanek Funeral Home for a Business Entity Insurance License/Registration. In the application, signed by Rozanek, he failed to denote a designated/responsible licensed producer. Under "background information," of the application form, specifically question number six, the applicant is asked whether or not the business entity or any owner, partner, officer or director ever had an insurance agency

contract or any other business relationship with an insurance company terminated for any alleged misconduct. Rozanek answered “yes” and then, presumably in his in own hand, wrote “I Rod Rozanek had no knowledge of the termination.” (E3).

2. On May 2, 2005, Beverly Creager sent Rozanek a letter denying the application for an insurance business entity license, pursuant to Neb. Rev. Stat. §44-4059(1), specifically for a violation of Neb. Rev. Stat. §44-4059(1)(b). (E3).

3. On May 16, 2005, Rozanek requested a hearing to request a reversal of this decision. In the letter, Rozanek alleged that R.A. Rozanek, Rozanek’s son who was the insurance agent for Rozanek, Inc., was no longer employed by the corporation. (E1).

4. At the hearing, evidence was adduced that Rozanek Funeral Homes, Inc., which Rozanek admitted was the former holder of the insurance producer license for all of the Rozanek Funeral Homes, had, pursuant to a consent order, ceded its insurance producer license (as well as R.A. Rozanek who was the licensed insurance producer for Rozanek Funeral Homes, Inc.,) to the Department of Insurance. Additionally, both R.A. Rozanek and Rozanek Funeral Homes, Inc. agreed that they had violated Neb. Rev. Stat. §§44-4053(2)(b), 44-1525(11), 44-4059(1)(b) and 44-4059(1)(g). (E4).

5. A Market Conduct Insurance Examination Report of R.A. Rozanek and Rozanek & Son Colonial Chapel Agency, located in Fremont, Nebraska, filed with the Department of Insurance on September 14, 2004, was submitted into evidence. In that report, the Department of Insurance found numerous problems with the conduct of the business of insurance and Pre-need burial insurance activities of the aforementioned entities. Additionally, during the course of the examination, additional information was requested

from them. The information never materialized. This led to the filing of a petition (A-1601) against R.A. Rozanek and Rozanek Funeral Homes and the eventual consent order. (E7).

6. During the course of the hearing, Rod Rozanek testified that he had no knowledge of the activities of the Fremont branch of Rozanek Funeral Homes and that, in any event, his son, R.A., had been terminated.

7. Further evidence was submitted by the Department of Insurance, specifically an Examination Report of Wadlow-Rozanek Colonial Chapel which is located in Lincoln, Nebraska. The examination report, submitted to the Director of Insurance on February 15, 2005, covered a period from August 26, 1998 through December 31, 2003. In that report, the Department of Insurance found that there were significant problems with the sale of Pre-Need trusts at that particular branch of the Rozanek funeral home business. For example, records were incomplete, improper beneficiaries were designated on policies, tax identification numbers were improperly listed and funds were incorrectly deposited into various accounts. The recommendation of the examiner was that all Pre-Need license(s) of Wadlow-Rozanek Colonial Chapel be revoked. (E8).

8. In response to this report, Rozanek stated that steps were being taken to rectify the problems and that they would hire a competent insurance producer to run this end of their business and that they had met with bank officials to attempt to correct this problem.

9. Finally, Rozanek emphasized at the hearing that he was completely unaware of the situation in Fremont or, for that matter, the consent order that ceded the company's insurance producer's license to the Nebraska Department of Insurance.

10. Rozanek provided nothing in the way of documentation that indicated his son, R.A., had been terminated from the company or any other evidence, either from witnesses

other than himself, or in the form of documents, that demonstrated an attempt to rectify the issues addressed in either the market conduct report or the examination report.

### CONCLUSIONS OF LAW

1. The Department of Insurance is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over the licensing of insurance producers in Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq. Said jurisdiction and control have been present at all times material hereto.

2. Neb. Rev. Stat. § 44-4053(1)(b) requires an applicant not commit any act that is a ground for denial, suspension, or revocation under Neb.Rev.Stat. §44-4059.

2. Neb. Rev. Stat. § 44-4053(2)(b) requires business entities licensed under the Insurance Producers Licensing Act to designate a licensed individual producer to be responsible for its compliance with the insurance laws, rules, and regulations of Nebraska.

3. Neb. Rev. Stat. § 44-4059(1) provides that the director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, for any one or more of the following causes:

- (b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;
- (g) Having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud;
- (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; or

- (i) Having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory.

4. Under Neb. Rev. Stat. § 44-1525(11) an insurer must respond to an inquiry by the Department of Insurance within fifteen working days.

5. Rozanek's Funeral Homes, Inc. admitted to violating, in the consent order styled A-1601, Neb. Rev. Stat. §§44-4053(2)(b), 44-1525(11), 44-4059(1)(b), and 44-4059(1)(g).

6. Additionally, there appears to be violations of Neb. Rev. Stat. §44-4059(1)(h) and §44-4059(1)(i) based upon the market conduct and examination reports in the record and a violation of Neb. Rev. Stat. §44-4053(1)(b) due to the admitted violations that are contained in the consent order A-1601. Since those additional alleged statutory violations have not been litigated nor are admitted to in the consent order, they are merely noted for purposes of an overall examination of the conduct of Rozanek Funeral Homes, Inc.

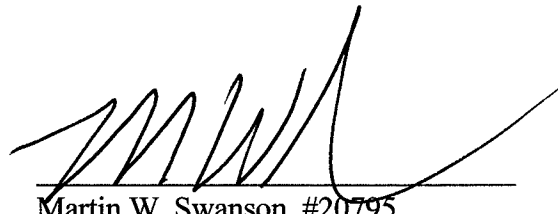
#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the application of Wadlow Rozanek Funeral Home for a Business entity Insurance License be denied. Rozanek has failed to demonstrate, with any evidence other than his own testimony, that steps have been taken to rectify the concerns raised in the market conduct report and examination report. While Rozanek claims that he was not aware of the report(s) or the actions of his son at the Fremont funeral home that does not and cannot excuse the actions that occurred. Lack of knowledge is not a defense, especially considering that Rozanek is President of the company.

Clearly, Rozanek Funeral Homes admitted to statutory violations of the insurance code and even the Lincoln office, of which Rozanek would have intimate knowledge of, appears to have committed very similar transgressions or, in the very least, had very similar issues to the Fremont funeral home. Moreover, Rozanek did not supply a complete application to the Department of Insurance. The application does not denote whom the insurance producer would be who would, in essence, run the insurance business of Rozanek Funeral Homes, Inc. as required by law. Although Rozanek promised to diligently search for a competent insurance producer to manage this side of the business, the reality is that he failed to do so prior to applying and the previous designated producer admitted to various violations of the law.

In summary, based upon the admissions of guilt in the consent order, the various reports issued by the Department of Insurance, and the lack of evidence demonstrating competence in the business of insurance, I recommend the denial of the producer license.

Dated this 12<sup>th</sup> day of July, 2005.

A handwritten signature in black ink, appearing to read 'MWS', is written over a horizontal line.

Martin W. Swanson, #20795  
Hearing Officer  
Nebraska Department of Insurance  
941 "O" Street, Suite 400  
Lincoln, NE 68508  
(402) 471-2201

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department In the Matter of the Denial of Application for License for Wadlow Rozanek Funeral Home., Cause No. A-1622.

Dated this 12<sup>th</sup> day of July, 2005.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



\_\_\_\_\_  
L. TIM WAGNER  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Find of Facts, Conclusion of Law, Recommended Order and Order was served upon Wadlow Rozanek Funeral Home, by mailing a copy to Rod Rozanek, 5200 R. Street, Lincoln, Nebraska 68504, by certified mail, return receipt requested, on this 13<sup>th</sup> day of July, 2005.

